

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 04-198
	:	
LU DE LIAO	:	

MEMORANDUM AND ORDER

Fullam, Sr. J.

February 9, 2006

The defendant pleaded guilty to various counts of tax evasion. At the sentencing hearing on September 21, 2005, counsel for the defendant and counsel for the government had not yet achieved an agreement as to the correct amount of taxes due and owing for the years in question. The government's figure was some \$120,000 higher than the defendant's, but both sides were simply approximating. The parties were, however, in agreement as to the correct guideline range, which would have remained the same regardless of which of the two suggested figures was correct.

I suggested that the sentencing hearing be delayed for a couple of weeks, so that the parties could work out their disagreement in the interim. Defense counsel agreed to that proposal, but counsel for the government objected to the postponement, stating, in effect, that the government figure was non-negotiable.

The court's sentence included a period of house arrest and probation. It was made a condition of probation that the defendant make an immediate payment of \$50,000 on account of past tax liability, and also included the following:

"It will also be a condition of probation that he achieve satisfactory resolution - as to civil liability - with the Internal Revenue Service, but what I consider satisfactory resolution means that if the parties can't agree on the resolution, the court will decide what's satisfactory and what isn't."

The parties were afforded a further period of 90 days in which to attempt to reach agreement.

On December 15, 2005, the defendant filed a "Motion to Compel the Internal Revenue Service to Follow Civil Deficiency Procedures for Tax Years At Issue Or, In the Alternative, For Appointment of Magistrate Judge or Special Master to Oversee Determination of Civil Tax Liabilities." The motion recited defense counsel's various efforts to work matters out with the Internal Revenue Service, in conjunction with certain pending administrative proceedings relating to tax years not involved in the criminal case. The motion recited that counsel for the government in the criminal case insisted that all negotiations be conducted through his office, rather than with I.R.S. directly; and had stated that no further negotiations would occur unless defense counsel agreed to the government's position in all respects. The defense motion proposed that the amount of tax due

by the defendant should be resolved in the administrative proceedings (or, in the alternative, by a magistrate judge or a special master in the criminal case).

The government did not respond to the defense motion. Upon inquiry, the court's staff was advised that the government intended to respond by a specified date, but no response was forthcoming. On January 13, 2006, defense counsel wrote a letter to the court, pointing out that no response to the motion had been filed, and requesting that the motion be decided. On January 19, 2006, I entered an order "that the government remove its objection to the issuance of statutory notices of deficiency for 1997 and 1998, thereby allowing all four years to be placed before the I.R.S. for civil resolution." The government has now filed a motion for reconsideration of that order, apologizing for the failure to respond to the motion in a timely fashion, but asserting that the court's order was inconsistent with the rulings made by the court at the time of sentencing. It is apparent to me that the government has misunderstood what the court ordered at the time of sentencing. I did not state that, absent agreement, this court would determine the amount of taxes due. I stated that, in the absence of agreement, this court would determine what would represent a satisfactory resolution of the issue. In my view, the obvious place to resolve the amount of taxes due is in the I.R.S. proceeding.

The motion for reconsideration will therefore be denied. The parties are reminded that, in the defense motion, it is represented that this court will be advised periodically (every 90 days) of the status of the I.R.S. proceeding.

An Order follows.

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ORDER

AND NOW, this 9th day of February 2006, upon
consideration of the government's motion for reconsideration of
this court's order dated January 19, 2006, IT IS ORDERED:

That the government's motion for reconsideration is
DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.